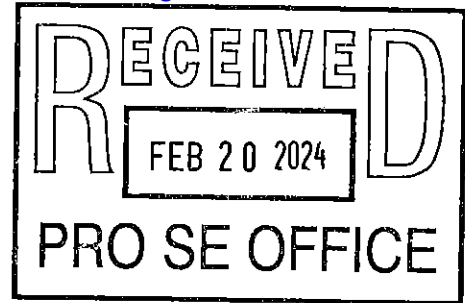


CHRISTOPHER M. MONGIELLO

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	x	
	}	APPEALS CASE NO. 7:24-cv-00694-CS
In Re:	}	CH 13 BK. CASE NO. 23-22732
CHRISTOPHER M. MONGIELLO	}	
Debtor,	}	REPORTERS TRANSCRIPT
	}	EMERGENCY MOTION
_____	}	EVICITION DATE FEBRUARY 23, 2024

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK (WHITE PLAINS)

IN RE: Case No. 23-22732-cgm
Chapter 13

CHRISTOPHER MONGIELLO,
Debtor.

CHRISTOPHER MONGIELLO, Adv. No. 23-07032-cgm

Plaintiff,

v.

HSBC BANK USA NA, as Trustee
for the LMT 2006-6 Trust
Fund,

Defendant.

CHRISTOPHER MONGIELLO, Adv. No. 23-07033-cgm

Plaintiff,

v.

INDYMAC BANK, F.S.B., et al., 300 Quarropas Street
White Plains, NY 10601

Defendants.

Wednesday, January 17, 2024
11:05 a.m.

TRANSCRIPT OF (CONTINUED)
BEFORE THE HONORABLE CECELIA G. MORRIS
UNITED STATES BANKRUPTCY COURT JUDGE

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TRANSCRIPT OF (CONTINUED):

PRETRIAL CONFERENCE;

PRETRIAL CONFERENCE;

RESPONSE RE: MOTION TO VACATE AUTOMATIC STAY

(RELATED DOCUMENT(S) 14) [30];

OBJECTION TO CONFIRMATION OF AMENDED PLAN WITH CERTIFICATE OF

SERVICE (RELATED DOCUMENT(S) 20) [27];

RESPONSE/REPLY TO THE ANSWER OF CHRISTOPHER MONGIELLO TO
MOTION OF TIFFANY BROOK EASTMAN SEEKING TO VACATE THE AUTOMATIC
STAY PURSUANT TO 11 U.S.C. SECTION 362(d)(1)

(RELATED DOCUMENT(S) 30, 14) [34];

MOTION FOR RELIEF FROM STAY/MOTION OF TIFFANY BROOK EASTMAN

SEEKING TO VACATE THE AUTOMATIC STAY PURSUANT TO

11 U.S.C. SECTION 362(d)(1) [14];

CONFIRMATION HEARING;

MOTION TO DISMISS CASE APPLICATION AND CERTIFICATE
OF SERVICE [28]

APPEARANCES (Continued):

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For the Chapter 13
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For Tiffany Brook
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By: JEFFREY REICH, P.C.
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For PHH Mortgage:

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For HSBC Bank USA,
National Association,
as Trustee:

Stradley Ronon Stevens
Young, LLP
By: DANIEL M. PEREIRA, ESQ.
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1 (Proceedings commence at 11:05 a.m.)

2 THE COURT: 23-07032, Mongiello v. HSBC Bank in the
3 matter of 23-22732, Christopher Mongiello. And I believe
4 there's another one, 23-07022 [sic], Mongiello v. IndyMac Bank.
5 And that one's on a pretrial. And then let's -- also,
6 23-22732, Christopher Mongiello, motion to vacate automatic
7 stay. And that's what we have here.

8 State your name and affiliation.

9 MR. CUSHNER: Todd Cushner for Chris Mongiello, the
10 debtor.

11 MS. RICHARDS: Rebecca Richards, Chapter 13 trustee's
12 office.

13 MR. REICH: Jeffrey Reich for Tiffany Brook Eastman,
14 Your Honor.

1 MS. GILMORE-MORRIS: Lori J. Gilmore-Morris
2 (indiscernible) Raquel Felix, on behalf of PHH Mortgage with
3 regard to the objection to confirmation.

4 MR. PEREIRA: Good morning, Your Honor. Daniel
5 Pereira on behalf of HSBC. I'm really just here for the
6 pretrial, but if I could just quickly address something with
7 Your Honor?

8 THE COURT: Yeah, because no answer's been filed, as
9 far as I can tell, from HSBC. Did y'all file an answer?

10 MR. PEREIRA: I believe we did, Your Honor. I
11 haven't (indiscernible) docket (indiscernible).

12 THE COURT: Well, answer this -- when did you file
13 it?

14 MR. PEREIRA: It looks like it was filed
15 December 19th.

16 THE COURT: Oh, because I have -- mine says no answer
17 as of 12/18. As you know, we work these things up quickly.
18 Okay.

19 MR. PEREIRA: Your Honor, if I could just address
20 something very quickly?

21 THE COURT: Sure.

22 MR. PEREIRA: We had a -- to be perfectly candid, a
23 situation in our office where we had some folks leave and are a
24 little short-handed. I was asked to cover this at the very
25 last minute, got the papers yesterday evening, and only

1 realized when I logged in that this was SDNY. I'd been told it
2 was EDNY.

3 And candidly, Your Honor, I'm admitted in EDNY but
4 not SDNY. I am admitted in the Bankruptcy Courts of New
5 Jersey, all three districts of Pennsylvania, the District of
6 Delaware. So I would just ask if, with Your Honor's
7 permission, to appear specially for this limited --

8 THE COURT: You'll appear specially for today.
9 Otherwise, you have to file a pro hac vice.

10 MR. PEREIRA: Understood, Your Honor. I apologize
11 for the --

12 THE COURT: But for today, I will of course let you
13 (break in audio).

14 MR. PEREIRA: Thank you.

15 THE COURT: Okay. And then so we have a pretrial
16 conference on both of these. Okay? Right?

17 MR. REICH: Yes, Your Honor. Would you like --
18 Jeffrey Reich for Tiffany Brook Eastman. How would -- which
19 matter would you like to proceed with first?

20 THE COURT: I'm honestly not sure.

21 MR. REICH: Okay.

22 THE COURT: Because I also have a relief from stay
23 from your client.

24 MR. REICH: Correct.

25 THE COURT: Which would put this in another court.

1 So why don't you just talk to me about that a bit.

2 MR. REICH: Okay. Judge, first of all --

3 THE COURT: Wait. There's another thing. Hold on.

4 MR. REICH: Sorry. Go ahead.

5 THE COURT: I also have a motion to dismiss.

6 MR. REICH: Correct, filed by the Chapter 13 trustee.
7 That's correct.

8 THE COURT: Ms. Richards, do you want to address the
9 motion to dismiss?

10 MS. RICHARDS: The motion to dismiss, Your Honor, we
11 did receive some of the documents that were requested. The
12 debtor is only one payment in arrears. The bigger issue is
13 that there's an open 341 hearing. We needed amended schedules,
14 an amended plan, and amended budget. It's been a quite
15 contentious 341 process. So that hearing is on for
16 February 15th, and we just need those amendments prior to that
17 date so the testimony can continue at that point.

18 MR. REICH: Judge?

19 THE COURT: Yes.

20 MR. REICH: Jeffrey Reich. I appeared on behalf of
21 Tiffany Brook Eastman in both of those 341(a) meetings, ordered
22 a transcript from the first one. The first one took place
23 approximately -- almost two months ago now. And at the time of
24 that first hearing, there was testimony regarding some
25 significant inaccuracies in the petition and in the schedules.

1 Ms. Richards just addressed a few of them, which is
2 Schedules I and J, which does not contain expenses. First of
3 all, it doesn't contain any provision for taxes, neither
4 federal or state taxes paid by the debtor. And the debtor
5 acknowledges that he does pay taxes. He acknowledged by
6 testimony. And, two, that the debtor acknowledged that he
7 paid -- and testified that he paid \$1,900 a month for his
8 parents' HELOC loan, which is not included in his expenses
9 there either.

10 And when you include those two expenses, I believe
11 the debtor is not even solvent on that. And the problem is we
12 haven't been able to conduct a -- the trustee really hasn't
13 been able to conduct her 341(a) meeting because it happened
14 again just last week at the last 341(a) meeting, and no
15 amendments were filed.

16 So it's now put over to February 15th for some very
17 crucial information for this Court and the creditors, but the
18 Court has -- the filing doesn't contain any accurate
19 information, based on the debtor's own testimony.

20 MR. CUSHNER: Your Honor, with respect to the taxes,
21 we're amending -- he's just getting the figure of what he paid
22 last year, to calculate -- because he's making pretty much the
23 same amount of money. And as far as his -- money to his
24 parents --

25 THE COURT: Wait, wait, wait, wait. I have that he

1 hasn't filed the tax returns for '19, '20, '21, and '22. Has
2 he not given -- not filed, has not given those to the trustee.

3 MS. RICHARDS: What I have seen, Your Honor, is that
4 we requested the business tax returns (indiscernible) personal
5 returns. I went through them again last night. I think the
6 issue is there's a Schedule C and he's filing (indiscernible)
7 tax returns, and (indiscernible) business income with -- as a
8 profit and loss within his personal tax returns.

9 I don't want to testify necessarily directly to that.
10 Mr. Cushner can probably state more clearly on that. But I
11 don't think the debtor is filing separate business tax returns,
12 which has further confused (indiscernible). I tried to get at
13 that at the 341 hearing, and again I was told that the
14 business's were filed separately, but I'm not entirely sure
15 that that is the case here.

16 THE COURT: But you --

17 MR. CUSHNER: The trustee's correct --

18 THE COURT: But you haven't received those tax
19 returns for the business, correct?

20 MS. RICHARDS: I don't know if they exist,
21 Your Honor, to be quite candid. I think they were included in
22 the personal returns under a Schedule C.

23 THE COURT: But they said they had filed them. So,
24 if they said they filed them, where are they?

25 MS. RICHARDS: That's the question that's

1 outstanding.

2 MR. CUSHNER: Okay.

3 THE COURT: Mr. Cushner, (break in audio) question?

4 MR. CUSHNER: Yeah, the debtor was a little confused.
5 He put in a Schedule C on his personal tax return, and his
6 accountant is working on his business tax returns, which I'm
7 supposed to have in about a week.

8 THE COURT: Okay. Okay, okay, okay. Let me just
9 have the whole picture then. Let's look at those for a moment.
10 You've got two lawsuits, Mr. Cushner.

11 MR. CUSHNER: That's correct, two adversary cases,
12 one against IndyMac, one against HSBC. HSBC did respond.

13 THE COURT: Yes, I see -- I heard that now, so I'm --

14 MR. CUSHNER: Okay.

15 THE COURT: I'll tell you what. I'm going to kick
16 the can down the road on purposes here. Y'all have got another
17 341. There is information -- you say that the accountant is
18 going to get the information in a week. I heard that, one
19 week. So, by the time the 341 is being held on the 15th,
20 everybody should have more information, and I should be clear
21 about what I'm going to do.

22 I have a motion to dismiss sitting there. But if we
23 don't have clarification on his tax returns, Mr. Cushner, I
24 would think that this may not be in federal court.

25 MR. CUSHNER: I understand, Your Honor, and I'll make

1 sure that we get those business tax returns.

2 THE COURT: Well, and if they're not tended at the
3 341, the same thing may happen.

4 MR. CUSHNER: Understood.

5 MR. REICH: Judge, may I go forward with my motion or
6 are you going to adjourn my motion?

7 THE COURT: I'm going to adjourn your motion too.
8 You've got -- your motion -- excuse me. I just looked at your
9 motion. What was it? The lift --

10 MR. REICH: My motion --

11 THE COURT: Yes.

12 MR. REICH: May I just lay a foundation or a record
13 here for a second?

14 THE COURT: Of course.

15 MR. REICH: So my motion -- my client's motion,
16 Tiffany Brook Eastman, we're dealing with really after two -- I
17 would say ten years of litigation in the state court, which was
18 a divorce case. In that divorce case, she was promised and
19 actually he was -- Mr. Mongiello was ordered to remove her name
20 from the mortgage and the notes on their marital residence,
21 which Mr. Mongiello still lives in.

22 That was going on for approximately -- has been going
23 on for approximately ten years. During those ten-year period,
24 in good faith, Ms. Brook Eastman did transfer the apartment to
25 her former spouse, relying on his promises and frankly the

1 order to remove her from the mortgage and note.

2 Subsequent to that, and during that time,
3 Mr. Mongiello did not remove her from the mortgage and note,
4 and defaulted on the mortgages. And it has ruined her credit,
5 significantly impacted her, over several -- more than several
6 years. Following COVID, which she was interrupted by -- in
7 pursuing what she was due under the initial order to remove her
8 from the note and mortgage, she commenced an action to force
9 Mr. Mongiello, to hold him in contempt, frankly, for failing to
10 take the action and remove him.

11 That led -- that motion was resolved by -- in a
12 lengthy decision of the Honorable Melissa Loehr, which is
13 annexed to my motion as Exhibit A, finding Mr. Mongiello in
14 contempt and directing that Tiffany Brook Eastman be appointed
15 as the receiver of the property, with limited powers of
16 attorney to sell the property. That was then codified in an
17 order following entry of that decision and order on
18 August 23rd, 2022. That's annexed to Exhibit B to my motion.

19 Ms. Brook Eastman was carrying out her duties as
20 receiver, as appointed receiver under the state court's order,
21 hired a broker, and was not allowed access to the property, and
22 Mr. Mongiello was taking action to prevent her from carrying
23 out her duties as receiver, which prompted another contempt
24 motion.

25 And annexed to my motion is an order of the Honorable

1 Thomas Quinones, Justice of the Supreme Court, admonishing the
2 defendant to abide by the Court's orders and directives,
3 including providing the plaintiff with a copy of all keys,
4 access codes, security codes, et cetera, to the subject
5 property, so she could carry out her duties.

6 Again, there was a big problem. Mr. Mongiello
7 wouldn't let her carry out her duties. So yet another motion
8 was filed. On April 17th, 2023, as annexed to the motion as
9 Exhibit D, there was a hearing before the Honorable James Hyer,
10 Justice of the Supreme Court; and in that record, which is
11 before Your Honor, is an agreement by and between the parties
12 which my client thought resolved the issue once again, and
13 provided Mr. Mongiello six months to get her removed from the
14 note and mortgage.

15 There was a standstill agreement that was terminated
16 by its terms and by agreement of Mr. Mongiello on the 180th
17 day. Mr. Mongiello still did nothing. On the 180 -- 179th
18 day, or 180th day, Mr. Mongiello filed the bankruptcy case.

19 He is in direct violation of multiple court orders --
20 contempt orders, Judge. He is in violation now of a settlement
21 agreement that everybody tried to help out with, including
22 Judge Hyer, to give him another six months to do it. And now
23 he's before your court asking the Court, I believe, to undo all
24 kinds of court orders that are already there as a matter of
25 this law and this Court does not have jurisdiction to look

1 behind.

2 I would ask Your Honor to function on the motion now.
3 This has gone on long enough, Judge. It should go back to the
4 state court, at least the issues with respect to my client's
5 receivership. There has been no motion before this Court to
6 remove my client as a receiver, nor was she even disclosed as
7 the receiver in the petition.

8 There are many, many, many what I would deem as
9 advertent nondisclosures in the bankruptcy petition causing the
10 trustee's -- and this is Mr. Frost's word -- that this is
11 disturbing. I have the transcript from his -- from the first
12 341(a) meeting. And still we are now two months later and none
13 of these inaccuracies, gross inaccuracies, Your Honor, have
14 been fixed.

15 In fact, just yesterday there was an amended Schedule
16 A and B disclosing the LLC, namely Christopher Mongiello's LLC,
17 which was not disclosed in the initial petition, and it took my
18 questioning of him to admit that he had it. And it took him
19 two months to amend Schedules A and B. I would ask Your Honor
20 to function on my motion and grant the motion to vacate the
21 stay.

22 THE COURT: Very good.

23 MR. CUSHNER: May I, Judge?

24 THE COURT: Yes, you may. Yes, you may. You may be
25 heard.

1 MR. CUSHNER: Thank you, Judge. I think what
2 Mr. Reich failed to point out is that in 2013 Mr. Mongiello
3 signed a loan modification which removed his wife from the note
4 and mortgage. There's a note, there's a mortgage, that only
5 has Mr. Mongiello's name on it. It doesn't have his client's
6 name on it.

7 I'm not 100 percent familiar with what happened in
8 state court, but I am making a motion to have him removed as
9 receiver, and I believe the two adversary cases may resolve
10 Mr. Reich's issues.

11 Now, as far as the fact that his LLC wasn't
12 disclosed, I didn't know about the LLC until we had the second
13 341(a) that was -- it wasn't two months. It was (break in
14 audio) amendments to the plan -- to the petition were made --
15 almost within three days.

16 MR. REICH: Judge, may I respond?

17 THE COURT: You don't need to. Section 362(d)
18 provides that on request of a party in interest, and after
19 notice and a hearing, the Court shall grant relief from the
20 stay by terminating such stay for cause.

21 Mr. Cushner didn't address your major arguments. In
22 determining whether cause exists to lift the automatic stay
23 under 362(d) to permit litigation to proceed in another forum,
24 courts in the Second Circuit look to the 12 factors, the Sonnax
25 Industries factors. That's the Second Circuit 1990.

1 And the factors are: whether relief would result in
2 a partial or complete resolution of the issues that are brought
3 up; lack of any connection with or interference with a
4 bankruptcy case; whether the other proceeding involves the
5 debtor as a fiduciary; whether a special tribunal is necessary
6 for the expertise; whether the debtor's insurer has assumed
7 full responsibility for defending it; whether the action
8 primarily involved third parties. On and on and on, I can go
9 on.

10 The Court need only apply the factors that are
11 relevant to the particular case, and does not need to give each
12 factor equal weight. That's Burger Brothers [sic], Inc. v.
13 South Street Seaport Limited Partnership, 183 B.R. 687.

14 Regarding the first factor, debtor and creditors have
15 engaged in litigation of the conduct in 2021 in state court.
16 If the court -- if the stay were modified to allow the state
17 court to continue, the matter would resolve. The debtor's
18 argument that the loan modification did happen in 2014 is an
19 issue for state court to determine.

20 Regarding the second factor, whether the result from
21 the state court would not affect the bankruptcy proceeding: If
22 the state court ruled in favor of the creditor, the mortgage
23 and other liens will be paid to the appropriate creditors or
24 any other proceeding will be held in escrow by the counsel to
25 the creditor and shall await further direction from the Court.

1 Regarding the seventh factor, creditor is moving
2 forward with her state court case and selling the property as
3 receiver and attorney-in-fact will not prejudice (break in
4 audio). The major goal of creditor seeking relief to move
5 forward in state court is specifically so the debtor's mortgage
6 creditor can be paid and she can be released from the mortgage.

7 Regarding Factor 10, judicial economy will be served
8 by granting relief from the stay. The debtor has ten years to
9 remove -- has had ten years to remove creditor from the
10 mortgage in seeking refinancing or payoff options. Debtor and
11 creditor have been litigating the issue for several years.
12 Debtor has been given opportunity after opportunity to abide by
13 the terms of numerous stipulations. Those stipulations have
14 been modified repeatedly to give debtor longer and longer to
15 fulfill his end of the bargain. The issues here are all state
16 court issues and not appropriate for this Court. As to the
17 debtor's affirmative defense, that is best argued before state
18 court.

19 Regarding Factor 12, the balance of interest weighs
20 heavily in favor of the creditor. Fourteen years following the
21 divorce, the creditor has been subjected to inaccurate credit
22 ratings and premiums due to the debtor's refusing to abide by
23 the terms of the original divorce stipulation and every single
24 stipulation that followed. Significant harm is being done to
25 the creditor while the debtor uses the tactic after tactic to

1 delay the sale of the condominium.

2 I grant your motion, Mr. Reich.

3 MR. REICH: Thank you very much, Judge.

4 MR. CUSHNER: Thank you, Your Honor.

5 THE COURT: So there we go. Now, then, as to
6 everything else, we're kicking the can down the road. I'll see
7 y'all again on 3/13.

8 And, Mr. Cushner, I better have cooperation from the
9 debtor at a 341 or there will be more consequences, such as the
10 motion to dismiss that's being continued also.

11 MR. CUSHNER: Understood, Your Honor.

12 THE COURT: Thank you.

13 MR. CUSHNER: I'm sorry, Your Honor. Just to
14 clarify, that would also apply to the pretrial?

15 THE COURT: Yeah, let's just --

16 MR. CUSHNER: Okay, Your Honor.

17 THE COURT: There's a part of me that says some of
18 your discovery needs to be at that 341.

19 Ms. Richards, you might want to make sure there's
20 some time on that 341.

21 MS. RICHARDS: Absolutely, Your Honor.

22 THE COURT: And that way, maybe we can save a lot of
23 money and headache. How does that sound?

24 MR. CUSHNER: Sounds good, Your Honor. Thank you.

25 MR. REICH: Thanks, Judge.

1 THE COURT: Thank you. And thank you, Mr. Reich.
2 Well argued.

3 (Proceedings concluded at 11:25 a.m.)

4 * * * * *

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C E R T I F I C A T I O N

9

10 We, Michelle Costantino and Alicia Jarrett,
11 court-approved transcribers, hereby certify that the foregoing
12 is a correct transcript from the electronic sound recording
13 provided for transcription and prepared to the best of my
14 ability.

15

16

17

Michelle Costantino

DATE: January 31, 2024

18

MICHELLE COSTANTINO, AAERT NO. 589

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ACCESS TRANSCRIPTS, LLC

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Alicia J. Jarrett

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ALICIA JARRETT, AAERT NO. 428

DATE: January 31, 2024

25

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